

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 20497 of 2004

Between:

M/s. Hotel Sitara, Opp. Secunderabad Railway Station,
Secunderabad, Rep. by its Managing Partner M. Raghavendra Rao, aged 64
Years.

..... PETITIONER

AND

- 1 The Presiding Officer, Additional Industrial Tribunal,
1st Floor, Chandra Vihar Complex, M.J. Road, Hyderabad.
- 2 Hyderabad N. Gopinatha Rao, S/o. Late S. Hanumantha Rao,
R/o. 10-367/2 Sri Satya Raghavendra Colony, Malkjgiri, Hyderabad -47

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ order or direction particularly one in the nature of Writ of Certiorari and call for record from the Addl. Industrial Tribunal Cum Labour Court, with regard to the orders passed in I.A.No. 172/2004 in M.P. 40/2002 dt. 24-09-04 and quash the same as illegal arbitrary and unjust

Counsel for the Petitioner:MR.S.PRASAD RAO

Counsel for the Respondent No. 1 : GP FOR LABOUR

Counsel for the Respondent No. 2: Mr. C. Sridhar

The Court made the following :

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ORDER:

Heard Sri S. Prasad Rao, learned counsel appearing for the petitioner and also Sri C. Sridhar, learned counsel appearing for the contesting respondents herein.

The petitioner herein, who is the Management, files this Writ Petition under Article 226 of the Constitution of India, seeking to assail the order rejecting the application filed by him in I.A.No. 172 of 2004 in M.P.No. 40 of 2002 dated 24.9.2004 on the file of the first respondent herein seeking a decision under Section 11 of the Industrial Disputes Act, read with Section 151 CPC, to decide as to the maintainability of the very application, as filed by the second respondent purported to be under Section 33-C(2) of the Act, and also the Minimum Wages Act and the Rules there under.

The main objection raised on the part of the petitioner is only to the effect that

the respondent was never an employee and therefore, such question, as to whether there exists any employer and employee relationship, the labour court could not have possibly gone into. He sought to place reliance on a decision reported in CHIEF SUPERINTENDENT, GOVERNMENT LIYESTOCK FARM HISSAR VS. RAMESH KUMAR , wherein it was held that whenever there is a dispute as to the very relationship, remedy under Section 33-C(2) of the Industrial Disputes Act is not available.

The learned counsel appearing for the respondents submits that having regard to the documents filed on his behalf, there is ample evidence to show that he is a worker-employee of the petitioner and that itself would sufficiently constitute and necessary application is rightly filed.

Considering the submissions by both sides, the first respondent rejected the petitioner's application mainly on the ground that all such questions virtually are not of much importance.

Having heard the learned counsel appearing on either side and also on perusal of the material on record, the main question that arises for consideration is as to whether, on the facts and circumstances of the case, is it open for the first respondent herein, who decided the issue as preliminary issue as to the existence of employer and employee relationship.

There is no dispute to the fact that the present application is filed under Section 33-C(2) of the Industrial Disputes Act, based upon certain documents which stated to have been issued by the petitioner himself, whereas the said claim is being contested, inter alia, on various grounds denying the genuineness and also correctness of the documents filed by him and further denying that the respondent was worked with them. Therefore, the petitioner sought a decision as a preliminary one as to the maintainability of going into the question, prima facie, as to whether there exists any such employer and employee relationship. No doubt, having regard to the nature of the plea raised from both sides, necessarily, it calls upon a consideration on not only mere pleas but also the documents filed by both sides. Apart from that, even documents, as stated by the petitioner being doubtful, it needs to be properly proved by the respondent herein, if necessary, by seeking any expert opinion as to the signature or even genuineness. In the circumstances, it cannot be said that even though such question can always be considered to be a preliminary

one, however, having regard to the fact that such question squarely depends upon the aspects of facts and law which would certainly be taken as preliminary issue, without there being an enquiry on the basic facts. Therefore, unless proper foundation is laid from both sides, it is not open for the respondent to go into such questions. The learned counsel appearing for the respondents submits that even though the enquiry has already commenced, there is delayed tactics on the part of the petitioner.

Taking into consideration all these aspects, it would suffice in the interest of justice to direct the first respondent herein to dispose of the very same application after conducting comprehensive enquiry by providing due and sufficient opportunity to both sides and dispose of the same on merits in accordance with law. The entire exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

Accordingly, the Writ Petition is disposed of. No costs.

B. PRAKASH RAO, J

Dated: 14.2.2005

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To

- 1 The Presiding Officer, Additional Industrial Tribunal,
1st Floor, Chandra Vihar Complex, M.J. Road, Hyderabad.
2 CCs to G.P. for Labour, High Court of A.P, Hyderabad. (OUT)
3. 2CD copies.